

entity; entering into a written agreement or pursuing an informal agreement with a regulated entity as the Director deems appropriate; and undertaking other such actions as may be applicable to undercapitalized, significantly undercapitalized or critically undercapitalized regulated entities), or to initiate enforcement proceedings under subtitle C of the Safety and Soundness Act (12 U.S.C. 4631 *et seq.*), shall not in any way limit the general supervisory or regulatory authority granted the Director under section 1311(b) of the Safety and Soundness Act (12 U.S.C. 4511(b)). The selection and form of regulatory or supervisory action under the Safety and Soundness Act is committed to the discretion of the Director, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action authorized by law.

Subpart C—Rules of Practice and Procedure

§ 1209.10 Authority of the Director.

The Director may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of any act that could be done or ordered by the presiding officer.

§ 1209.11 Authority of the Presiding Officer.

(a) *General rule.* All proceedings governed by subpart C of this part shall be conducted consistent with the provisions of chapter 5 of Title 5 of the United States Code. The presiding officer shall have complete charge of the adjudicative proceeding, conduct a fair and impartial hearing, avoid unnecessary delay, and assure that a complete record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to:

(1) *Control the proceedings.* (i) Upon reasonable notice to the parties, not earlier than 30 days or later than 60 days after service of a notice of charges under the Safety and Soundness Act,

set a date, time, and place for an evidentiary hearing on the record, within the District of Columbia, as provided in section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), in a scheduling order that may be issued in conjunction with the initial scheduling conference set under § 1209.36, or otherwise as the presiding officer finds in the best interest of justice, in accordance with this part; and

(ii) Upon reasonable notice to the parties, reset or change the date, time, or place (within the District of Columbia) of an evidentiary hearing;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to address legal or factual issues, or evidentiary matters materially relevant to the charges or allowable defenses; to regulate the timing and scope of discovery and rule on discovery plans; or otherwise to consider matters that may facilitate an effective, fair, and expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue and enforce subpoenas, subpoenas *duces tecum*, discovery and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas issued by the presiding officer;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Director shall have the power to grant summary disposition or any motion to dismiss the proceeding or to make a final determination of the merits of the proceeding;

(8) Take all actions authorized under this part to regulate the scope, timing, and completion of discovery of any non-privileged documents that are materially relevant to the charges or allowable defenses;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive materially relevant evidence, and rule upon the admissibility of evidence or exclude, limit, or otherwise rule on offers of proof;